Filed 1/8/19 In re J.S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re J. S., a Person Coming Under the Juvenile Court Law.	C085752
THE PEOPLE, Plaintiff and Respondent, v. J. S., Defendant and Appellant.	(Super. Ct. No. JV135113)

Minor J. S., then nearly age 18, appeals from a disposition order committing him to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (the division) following repeated probation violations occurring both before and after the juvenile court's contested jurisdictional finding he committed robbery (Pen. Code, § 211), an offense qualifying him for commitment to the division (see Welf. & Inst. Code, §§ 731, 800).

On appeal, the minor contends the division commitment was an abuse of discretion because: (1) there is not substantial evidence the commitment would benefit him; (2) the order was impermissibly based upon the unavailability of less restrictive options; and (3) there is not substantial evidence that less restrictive placements were inappropriate. The minor also complains the juvenile court failed to consider the minor's ADHD diagnosis and special educational needs and requests correction of the disposition minute order and commitment order to reflect a maximum term of confinement of two years.

We shall order the correction and/or clarification of these orders and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The minor was first adjudged a Welfare and Institutions Code section 602 ward of the court on September 15, 2015,[1] after admitting to being a minor in possession of a firearm, vandalism, and discharge of a BB gun in a grossly negligent manner for which he received probation. What followed was incorrigible behavior and a series of probation violations which began the very next month.

Relevant to his commitment to the division, the People filed a supplemental wardship petition on October 7, 2016, alleging the minor was guilty of robbery, smuggling a controlled substance into a jail, bringing a controlled substance into juvenile hall, and receiving stolen property. Following a contested jurisdictional hearing, the juvenile court found the minor had committed robbery and had brought a controlled substance into juvenile hall. The court referred the minor for evaluation for placement by the interagency management and authorization committee (committee) to determine whether an out-of-state Level B or an in state Level A placement would be appropriate.

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[1] We note the minor also had previous wardship petitions filed against him in 2013 and 2014 which were subsequently dismissed.

The probation department's December 12, 2016, report noted several Level B placements were willing to work with the minor, but the committee recommended a Level A facility. Probation, however, disagreed and recommended a 90-day juvenile hall commitment, which the juvenile court followed with the minor to serve an additional 60 days of electronic monitoring at his father's home following his release.

Thereafter, three separate petitions for violation of probation were filed in March 2017. The first alleged that the minor violated probation by failing to attend or being late for school, using marijuana, and violating electronic monitoring. The second alleged the minor was away overnight without his father's permission two times during March and had failed to keep his probation officer advised of his address. The third alleged the minor received stolen property and falsely identified himself to police. The minor's intake report noted the minor "stated he lied because he had cut off his ankle monitor." Thereafter, the third petition was amended to add allegations that the minor also committed burglary and attempted burglary. A fourth petition for violation of probation was filed May 18, 2017, alleging the minor committed another burglary.

A probation report dated May 31, 2017, noted the minor's involvement in 27 incident reports for insubordinate behavior in juvenile hall during the preceding seven weeks. It further noted the minor's positive achievement change tool (assessment) revealed the minor was a high risk to reoffend. The report also highlighted, "The minor is appearing before the Court relative to multiple Violations of Probation. He continues to commit new offenses and amass Violations of Probation despite a high level of Court and Probation intervention. The minor continues to show a disregard for the orders of the Court and the directives of Probation. It appears more stringent measures need to be taken to obtain the minor's compliance with the law and societal rules. Probation stands by the Level 'A' placement recommendation made in the Addendum Report dated April 11, 2017."

In response to a settlement offer by the People, the juvenile court referred the minor for another assessment to determine whether any Level B placement would accept him. As of June 23, 2017, all Level B placements declined to accept the minor, and the juvenile court ordered inquiry into: (1) whether a Level A placement willing to take him could be identified; and (2) what treatments would be available for the minor at the division if he were sent there.

The June 29, 2017, probation report identified six Level A facilities willing to interview the minor, which interviews had not been completed. The report also noted that if the minor were committed to the division, he would be subjected to an intake process including assessments for "education, medical and mental health, risk and need, cognitive behavioral intervention, and treatment interventions." "Services provided within the [division] include education, with the potential to obtain a diploma or GED, vocational programs, work experience and job opportunities, correspondence college courses, and the Youth Conservation Camp."[2]

On July 7, 2017, the court referred the minor to the committee for a Level A evaluation, and the committee endorsed a Level A placement.

Thereafter, on August 8, 2017, the previously referenced probation violations were dismissed and superseded by the amended violation of probation petition filed the same day. The August 8 petition alleged the minor violated his probation condition to follow

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[2] A July 31, 2017, probation report built upon this, adding that the initial assessment lasts about 45 days. The report also noted: "According to documentation received from the [division] the California Youth Assessment & Screening Instrument is administered to all new commitments. All youth are assessed in twelve domains prior to their Initial Case Review, which occurs approximately 45 days after arrival. The [instrument] identifies areas of high risk and strengths for a youth, and is used as an additional tool for caseworkers in developing an Individualized Case Plan. Treatment goals incorporate the information acquired from the multi-disciplinary test results, the [instrument], and the youth's commitment offense."

the law when he committed two burglaries, attempted burglary, two instances of receiving stolen property, and also that the minor falsely identified himself to police. The minor admitted these allegations, and the matter was set for a contested dispositional hearing.

On August 23, 2017, the People requested the minor be committed to the division, recounting the minor's lengthy history of law violations and incorrigible behavior. In response, the minor sought a Level A placement, which was supported by the probation department, despite the acknowledgement that it was unlikely that a Level A placement would accept the minor; probation's rationale was that the Level A placement order would make the minor eligible for transitional housing services through extended foster care. On August 30, 2017, the juvenile court provisionally ordered Level A placement so that it could be determined whether there were any Level A placements willing to work with the minor given his impending 18th birthday; it further ordered the probation department consider whether the minor could be placed with his grandfather or mother. A probation report filed September 14, 2017, noted no Level A or Level B programs were willing to work with the minor and attempts to contact the minor's grandfather were unsuccessful.

The juvenile court's September 18, 2017, commitment order provided extensive explanation into the court's reasoning, stating: "as I said in the past, I read and considered both briefs as well as the extensive attachments to each one. And I've continued this matter for further investigation to try and get all options on the table and my assessment is as follows: I'm going to order the minor committed to [the division] for the following reasons: The minor -- I'm quoting from the May 31st, 2017 probation report at this point. Probation said the minor is appearing before the Court relative to multiple violations of probation. He continues to commit new offenses and amass violations of probation despite a high level of court and probation intervention. The

minor continues to show a disregard for the orders of the Court and the directives of probation and that is certainly verified by the record.

"The minor is before us based on a [robbery] charge which makes him eligible for [the division]. He within a few months committed additional very serious offenses, two residential burglaries and a third attempted residential burglary. [¶] Probation -- to continue the quotation says it appears more stringent measures need to be taken to obtain the minor's compliance with the law and societal rules. And that certainly appears to me to be true. What makes no sense to me is probation's recommendation of Level A placement which probation persisted in at our last hearing in spite of the fact that they acknowledged that was really a simply unavailable alterative to the Court.

"I remanded the case back to see if that was actually true, and sure enough the minor was rejected at all Level A placements for the reasons we suspected. That he would attain the age of 18 in a matter of a few more weeks and that he already had his GED and that therefore no Level A placement would be possible. [¶] So at this point a Level A placement would basically get him no services whatsoever and give probation no real control over his activities. It would be basically an artifice to him eligible for AB12 benefits. But without the requirement that probation clearly sees as necessary that there be more of a high level intervention by Court and probation. I just don't consider that to be a reasonable alternative. I considered other options as is my duty under law and that included not simply Level A placement but also placement with family members and that didn't bear any fruit.

"So I find that the minor is eligible for [the division], and that is the most appropriate place to send him at this point. And I'm relying on the assessment of the Sacramento Probation Department in determining that he is an individual with high criminogenic needs as indicated by the PACT scores. And I'm also relying on the information I quoted in the record regarding the services that [the division] would offer

him, namely, an individualized treatment plan that could address all of those criminogenic needs."

The juvenile court then issued the following disposition: "First of all, I adopt the findings on page two of the probation memorandum dated August 24th, 2017. I find that the parent or guardian is incapable of providing or has failed or neglected to provide the proper maintenance, training and education for the minor. In that regard I'll note that the minor's mother is not here today or nor are there any other family members here. [¶] I also find that the minor has been tried on probation in such parental custody and has failed to reform. The welfare of this minor requires that the custody of the minor be taken away from the parent.

"I also find that the mental and physical conditions of this minor are such as to render it probable that he will be benefitted by the reformatory and educational discipline and other treatment provided by the [division], and that no suitable alternative exists at the local treatment level. And I find that an individual education program has not been established; therefore, the Court finds the minor is not an individual with exceptional needs." The juvenile court set the minor's maximum term of confinement at two years. The minor timely appealed.

DISCUSSION

I

The Juvenile Court's Commitment Order

The minor argues the record from the dispositional hearing is devoid of any evidence that the division has programs that would benefit him, and the juvenile court's ruling that the division would assess and appropriately enroll him in treatment programs was an abdication of the juvenile court's responsibility to determine benefit. In related arguments, he complains he was only committed to the division because there were no other available placements and that substantial evidence does not support there were no less restrictive alternatives. We disagree.

" 'The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision.' [Citation.] 'A [division] commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.' [Citation.] 'Although the [division] is normally a placement of last resort, there is no absolute rule that a [division] commitment cannot be ordered unless less restrictive placements have been attempted.' [Citation.] [¶] We examine the evidence in light of the purposes of the juvenile court law. (*In re Michael R.* (1977) 73 Cal.App.3d 327, 333 . . . ; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1542 . . . [purposes of the juvenile system include 'the protection of the public as well as the rehabilitation of the minor'].)" (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1080-1081.)

The minor argues *In re Carlos J.* (2018) 22 Cal.App.5th 1 requires the juvenile court make specific findings on the programs available to the minor before this court can uphold his commitment to the division. We find *In re Carlos J.* distinguishable and that this case is more akin to the minor in *In re A.R.*, where the court upheld a division commitment for a minor who was 18 years old at disposition, had a lengthy history of unsuccessful interventions by the system, and behaviors justifying his commitment. (*In re A.R.*, *supra*, 24 Cal.5th at p. 1081.) There was no need to specifically identify which programs at the division supported the finding that the minor would probably benefit from the division commitment where substantial evidence supported that he would so benefit. (*Id.* at p. 1081, fn. 3.)

Here, substantial evidences supports the juvenile court's finding that the minor, who was nearly 18 years old, at a high risk to reoffend, and who had engaged in several serious felonies following his disposition for a robbery offense would probably benefit from a commitment to the division, which would provide him services to address his criminogenic needs. The various programs available to the minor were identified by the probation department and considered by the court in making its commitment. That the

division commitment was needed was further supported by the probation department's opinion (adopted by the court) that the minor had not reformed, despite a high level of court and probation intervention, and that more stringent measures were needed.

It goes without saying that the juvenile court did not abuse its discretion in determining that an unavailable Level A placement[3] which was an artifice for allowing the minor to access transitional housing services through extended foster care was not a suitable less restrictive alternative. The last time the minor was released into his father's care (which included electronic home monitoring), the minor absconded and committed multiple burglaries, attempted burglary, and received stolen property. Thus, sanctioning the minor's release to *no parent* would be inconsistent with seeking the minor's rehabilitation, while protecting the community, and would likely only set him up for failure and an early introduction into the adult correctional system.[4] Substantial evidence supports the juvenile court's rejection of this alternative. Further, we find *In re Aline D.* (1975) 14 Cal.3d 557 inapposite because here the juvenile court did not express doubt that a division commitment would probably benefit the minor, and the juvenile court's determination that it would probably benefit him is supported by substantial evidence for the reasons discussed herein.

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3 A Level A placement was unavailable because the minor, having already completed his GED, could not legally be housed at any Level A facility following his 18th birthday, and thus, no program was willing to work with the minor for the mere weeks preceding that birthday. Such programs could require months, if not years, to complete.

4 The probation department's inconsistency between highlighting the minor's need for more stringent intervention to effectuate positive change in the minor's behavior and recommending a placement for independent transitional housing is difficult to reconcile. We note the existence of the minor's child may have played a role in this choice, but that does not eliminate the substantial evidence supporting the juvenile court's determination the minor would probably benefit from a division commitment and that there were no suitable less restrictive alternatives.

II

The Minor's ADHD

We understand the minor's contention to be that the juvenile court's failure to consider his documented ADHD diagnosis prior to his commitment was an abuse of discretion requiring remand for rehearing to determine his educational needs. We disagree.

In *In re Angela M.* (2003) 111 Cal.App.4th 1392, the Court of Appeal recognized that when a court-appointed psychologist during the dispositional hearing puts the court on notice that the minor may need an individualized education plan, it is the duty of the juvenile court to consider the minor's educational needs and forward those observations to the division. (*Id*. at pp. 1392, 1398-1399.) However, it does not follow that a precommitment individualized education plan assessment is required whenever a minor takes medication for ADHD, but has never had such a plan and there is no indication that a plan is needed.

Here, there is no suggestion that the juvenile court ignored its duties under (1) California Rules of Court, rule 5.649(d) to order a special education assessment whenever the court determines such assessment is needed, nor under (2) California Rules of Court, rule 5.805(5) to provide the division "information regarding the youth's educational needs, including the youth's current individualized education program if one exists." On the contrary, there was no suggestion the minor needed an individdualized education plan, and thus the juvenile court correctly found that "an individual education program ha[d] not been established;" and therefore, "the minor [wa]s not an individual with exceptional needs." Under these circumstances, the juvenile court did not abuse its discretion in failing to hold a hearing on whether the minor needed an individual education plan for his ADHD prior to issuing its commitment order.

III

The Maximum Term Of Commitment

The minor argues both the minute order and juvenile court's order of commitment inaccurately reflect a maximum commitment term of five years when the juvenile court's disposition was for a maximum term of two years at the division. The People concur that the commitment order inaccurately lists the maximum term for the division at five years, but argue that the minute order's description of the "aggregate maximum term of confinement" of five years was accurate.

We note the reporter's transcript of the disposition hearing shows that the juvenile court set the maximum term of confinement for the division at two years. This oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Thus, the reference in the commitment order setting the maximum term of confinement at five years is inaccurate. We also note another typographical error describing "the commitment term of *four* (2) years . . . ." (italics added.) We will direct the juvenile court to correct these errors.

The People argue on appeal that the September 18, 2017, minute order listing the aggregate maximum term of confinement at five years was correct because five years was the maximum term of confinement for the robbery offense. However, given that the maximum term of confinement discussed by the People at the disposition hearing was actually 12 years, the minute order's sentence that, "The minor was advised of and understood that aggregate maximum term of confinement, to wit: 5 years" is ambiguous. We shall direct the juvenile court to clarify this sentence.

DISPOSITION

The juvenile court is directed to amend the commitment order to reflect a maximum commitment of two years, which shall be forwarded to the California Department of Corrections and Rehabilitation for forwarding to the division. It shall also

clarify the identified portion of its September 18, 2017, minute order. The judgment is otherwise affirmed.

/s/
Robie, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Renner, J.